IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

Review Petition NO. 30 OF 2005
in
Suit No. 8088 of 1984

A. R. Antuley ... Petitioner
VS.
Godavari Sugar Mills Ltd. & ors. ... respondents

Mr. R.S. Pai i/b. R.S.Desai for petitioner (original Defendant no.1)
Mr. K. K. Jadhav for respondent no. 1 (original Plaintiff)
Mr. S. P. Kanuga for Defendant no.7

CORAM: **D.G. KARNIK J.**

DATE: 29/6/2006

P.C.:

1. Heard counsel for the parties. Perused the report given by the section officer of the Board Department on 5th May 2006. From the report it is clear that there is no material on record to show that the suit summons was served on the present petitioner. In para 6(d) of the petition the petitioner has averred that the suit summons was not on him. The respondent no.1 (original Plaintiff) has not filed any affidavit denying the correctness of the office report about non service of the summons on the present petitioner. In the circumstances relying upon the affidavit of the petitioner and

the office report I am satisfied that the summons was not served on the petitioner (original Defendant no.1).

2. The decree was passed ex parte against the petitioner. Hence the decree is required to be set aside under Order 9 Rule 13 CPC.
3. Counsel for the respondent no.1 – original Plaintiff submitted that the petition has been wrongly filed as review petition and it ought to have been filed under Order 9 Rule 13 of CPC. In my view, this is a procedural lapse. In the circumstances the petition be treated as application under Order 9 Rule 13. The ex parte decree is set aside qua the petitioner (original Defendant no.1) and the suit is restored to file qua the applicant.
4. Mr. Pai counsel for the petitioner waives further service of the suit summons on restoration. However, counsel for the respondent no. 1 (original Plaintiff) is directed to serve a copy of the plaint on the counsel for the petitioner within one week.

(D.G. KARNIK J.)